

1 NEIL A. SMITH (No. 63777)  
2 HOWARD RICE NEMEROVSKI CANADY  
3 FALK & RABKIN  
4 A Professional Corporation  
5 Three Embarcadero Center, 7th Floor  
6 San Francisco, California 94111-4024  
7 Telephone: 415/434-1600  
8 Facsimile: 415/217-5910

9 Attorneys for Plaintiff  
10 IpLearn, LLC

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 IpLearn, LLC,

14 Plaintiff,

15 v.

16 Click2learn.com, Inc.,

17 Defendant.

Civil Action No. C 04-00685 MHP

FIRST AMENDED COMPLAINT AND  
JURY DEMAND

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

1 **FIRST AMENDED COMPLAINT**

2 For Plaintiff IpLearn, LLC's First Amended Complaint against Defendant SumTotal  
3 Systems, Inc., successor of Click2learn, Inc., Plaintiff, by and through its attorneys, alleges  
4 the following:

5  
6 **ALLEGATIONS COMMON TO ALL COUNTS**

7  
8 **NATURE OF THIS ACTION**

9 1. This is an action for patent infringement arising under the patent laws of the  
10 United States, 35 U.S.C. § 101 et seq., including 35 U.S.C §§ 271 and 281-285.

11  
12  
13 **THE PARTIES**

14 2. IpLearn, LLC ("IpLearn" or "Plaintiff") is a corporation organized under the  
15 laws of California with its principal place of business located at 1807 Limetree Lane,  
16 Mountain View, California, 94040.

17 3. Upon information and belief, Click2learn, Inc. ("Click2learn") was a corporation  
18 organized under the laws of the State of Delaware with a regular and established place of  
19 business at 2955 Champion Way, Suite #192, Tustin Ranch, California 92782, and had its  
20 principal place of business at 110 110th Ave NE, Bellevue, Washington 98004.

21 4. Upon information and belief, on or about March 19, 2004, Click2learn merged  
22 with Docent, Inc. ("Docent"), which was a corporation organized under the laws of the State  
23 of Delaware with a regular and established place of business in Santa Clara County,  
24 California

25 5. Upon information and belief, the new entity formed by the merger of Click2learn  
26 and Docent is Defendant SumTotal Systems, Inc. ("STS"), a corporation organized under the  
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1 laws of the State of Delaware with a regular and established place of business at 2444  
2 Charleston Road, Mountain View, California.

3 6. Upon information and belief, STS is a successor to both the assets and liabilities  
4 of Click2learn.

### 5 6 **JURISDICTION VENUE AND INTRADISTRICT VENUE**

7 7. This Court has subject matter jurisdiction by virtue of 28 U.S.C. §§ 1331  
8 and 1338.

9 8. Venue in this District is proper pursuant to 28 U.S.C. § 1391 and 1400.  
10 This intellectual property case has already been assigned to the San Francisco Division.

### 11 12 **COUNT 1 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 5,779,486**

13 9. On July 14, 1998, U.S. Patent No. 5,779,486 (“the ’486 patent”), entitled  
14 “Methods and Apparatus to Assess and Enhance a Student’s Understanding in a Subject,”  
15 was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and  
16 Trademark Office (Exhibit A).

17 10. IpLearn is the owner of all right, title and interest in and to the ’486 patent,  
18 including the right to sue and collect damages for past infringement.

19 11. Upon information and belief, Click2Learn and STS have infringed and STS  
20 is now infringing one or more claims of the ’486 patent by making, using, offering to sell, or  
21 selling within the United States and/or importing into the United States the claimed subject  
22 matter in at least the form of a product referred to by Click2Learn as the ASPEN™  
23 Enterprise Productivity Suite, including at least the ASPEN™ Learning Content  
24 Management Server (“LCMS”), the ASPEN™ Learning Management Server (“LMS”), and  
25 the ASPEN™ Virtual Classroom Server (“VCS”), all without the authorization or consent of  
26 IpLearn.  
27  
28

12. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '486 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

13. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

14. Upon information and belief, Click2learn's and STS's infringing activities have been and continue to be deliberate and willful. This allegation is specifically identified as one which is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

## COUNT 2 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 5,934,909

15. On August 10, 1999, U.S. Patent No. 5,934,909 ("the '909 patent"), entitled "Methods and Apparatus to Assess and Enhance a Student's Understanding in a Subject," was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office (Exhibit B).

16. IpLearn is the owner of all right, title and interest in and to the '909 patent, including the right to sue and collect damages for past infringement.

1. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '909 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.

18. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '909 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

19. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

20. Upon information and belief, Click2learn's and STS's infringing activities have been and continue to be deliberate and willful. This allegation is specifically identified as one which is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

### **COUNT 3 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 6,118,973**

21. On September 12, 2000, U.S. Patent No. 6,118,973 ("the '973 patent"), entitled "Methods and Apparatus to Assess and Enhance a Student's Understanding in a Subject," was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office (Exhibit C).

22. IpLearn is the owner of all right, title and interest in and to the '973 patent, including the right to sue and collect damages for past infringement.

1. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '973 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.

24. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '973 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

25. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

26. Upon information and belief, Click2learn's and STS's infringing activities have been and continue to be deliberate and willful. This allegation is specifically identified as one which is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

#### **COUNT 4 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 6,126,448**

27. On October 3, 2000, U.S. Patent No. 6,126,448 ("the '448 patent"), entitled "Computer-Aided Learning Methods and Apparatus for a Job," was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office (Exhibit D).

28. IpLearn is the owner of all right, title and interest in and to the '448 patent, including the right to sue and collect damages for past infringement.

29. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '448 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.

30. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '448 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

31. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

32. Upon information and belief, Click2learn's and STS's infringing activities have been and continue to be deliberate and willful. This allegation is specifically identified as one which is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

### **COUNT 5 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 6,398,556**

33. On June 4, 2002, U.S. Patent No. 6,398,556 ("the '556 patent"), entitled "Inexpensive Computer-Aided Learning Methods and Apparatus for Learners," was duly and legally issued to Chi Fai Ho, John P. Del Favero, Jr. and Peter P. Tong by the United States Patent and Trademark Office (Exhibit E).

34. IpLearn is the owner of all right, title and interest in and to the '556 patent, including the right to sue and collect damages for past infringement.

1. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '556 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.

36. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '556 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

37. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

38. Upon information and belief, Click2learn's and STS's infringing activities have been and continue to be deliberate and willful. This allegation is specifically identified as one which is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

### **COUNT 6 -- PATENT INFRINGEMENT: UNITED STATES PATENT NO. 6,685,478**

39. On February 3, 2004, U.S. Patent No. 6,685,478 ("the '478 patent"), entitled "Inexpensive Computer-Aided Learning Methods and Apparatus for Learners," was duly and legally issued to Chi Fai Ho, John P. Del Favero, Jr. and Peter P. Tong by the United States Patent and Trademark Office (Exhibit F).

40. IpLearn is the owner of all right, title and interest in and to the '478 patent, including the right to sue and collect damages for past infringement.

1. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '478 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to by Click2Learn as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.



42. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '478 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

43. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

**COUNT 7 -- PATENT INFRINGEMENT: UNITED STATES  
PATENT NO. 6,688,888**

44. On February 10, 2004, U.S. Patent No. 6,688,888 ("the '888 patent"), entitled "Computer-aided Learning System and Method," was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office (Exhibit G).

45. IpLearn is the owner of all right, title and interest in and to the '888 patent, including the right to sue and collect damages for past infringement.

46. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the '888 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom Server ("VCS"), all without the authorization or consent of IpLearn.

47. Upon information and belief, Click2learn's and STS's acts constitute direct and/or contributory and/or inducement of infringement of the '888 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

48. By reason of Click2learn's and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

**COUNT 8 -- PATENT INFRINGEMENT: UNITED STATES  
PATENT NO. RE 38,432**

49. On February 24, 2004, U.S. Patent No. RE 38,432 (“the ’432 patent”), entitled “Computer-aided Group-Learning Methods and Systems,” was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office (Exhibit H).

50. IpLearn is the owner of all right, title and interest in and to the ’432 patent, including the right to sue and collect damages for past infringement.

1. Upon information and belief, Click2Learn and STS have infringed and STS is now infringing one or more claims of the ’432 patent by making, using, offering to sell, or selling within the United States and/or importing into the United States the claimed subject matter in at least the form of a product referred to as the ASPEN™ Enterprise Productivity Suite, including at least the ASPEN™ Learning Content Management Server (“LCMS”), the ASPEN™ Learning Management Server (“LMS”), and the ASPEN™ Virtual Classroom Server (“VCS”), all without the authorization or consent of IpLearn.

52. Upon information and belief, Click2learn’s and STS's acts constitute direct and/or contributory and/or inducement of infringement of the ’432 patent in violation of the patent laws of the United States, 35 U.S.C. §§ 271 and 281-285.

53. By reason of Click2learn’s and STS's acts alleged herein, IpLearn has suffered, is suffering, and will continue to suffer irreparable damage, and unless STS is restrained from continuing its wrongful acts, the damage to IpLearn will continue.

**PRAYER FOR RELIEF**

WHEREFORE, IpLearn seeks judgment and relief against STS including:

54. a permanent injunction enjoining and restraining STS and its agents, attorneys, servants, successors, assigns, employees and all those in privity or in active concert and participation with them, or any of them, from infringing the ’486 patent, the ’909 patent, the

